

## China's 2009 Regulation on the Prevention and Control of Marine Pollution from Ships

Nengye Liu<sup>\*</sup>

### Introduction

The People's Republic of China is a major coastal state with an eastern continental coastline of some 18 000 km, complemented by a further 14 000 km of coastline around its 6 500 islands.<sup>1</sup> Obviously, the marine environment is of fundamental importance for both the economic development and the environmental protection of China. According to the National Report on Social and Economic Development, China imported 178 880 000 tons of crude oil and 38 850 000 tons of refined oil in 2008.<sup>2</sup> Of this, some 95% is carried by maritime transportation. China is therefore at great risk of marine pollution from ships.

The initial stage of China's economic reform and openness witnessed the promulgation of 1982 Marine Environmental Protection Law (MEPL 82) as well as the 1983 Regulation on Prevention of Pollution from Ships at Sea (Regulation 83). China

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<sup>\*</sup> PhD Candidate, Department of Public International Law, Faculty of Law, Ghent University, Belgium (email: [nengye.liu@ugent.be](mailto:nengye.liu@ugent.be)).

<sup>1</sup> E. Franckx (ed), *Vessel-Source Pollution and Coastal State Jurisdiction: The Work of the ILC Committee on Coastal State Jurisdiction Relating to Marine Pollution (1991-2000)* (Kluwer Law International, The Hague 2001) 201.

<sup>2</sup> '2008 Gazette of National Social and Economic Development of People's Republic of China' (available at [http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20090226\\_402540710.htm](http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20090226_402540710.htm)).

has subsequently ratified the United Nations Convention on the Law of the Sea (LOSC) as well as many International Maritime Organization (IMO) treaties dealing with vessel-source pollution. These include: the Protocol of 1992 of the International Convention on Civil Liability for Oil Pollution Damage (CLC); the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL73/78); the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC90); the and International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Convention). Recent domestic legal reform relating to marine pollution from ships was triggered by the amendment of MEPL82 in December 1999 (MEPL99). It has however taken China ten years to enact its new regime.

On 2 September 2009, the State Council of the P. R. China adopted the Regulation on Administration of Prevention and Control of Pollution of Marine Environment from Vessels (Regulation 09), which will replace the Regulation 83 and is scheduled to enter into force on 1 March 2010. This report analyses Regulation 09 in comparison with Regulation 83 and relevant international conventions.

### **What is New in the Regulation 09?**

Regulation 09 contains 9 chapters with 78 clauses, dealing with: (1) general principles; (2) general provisions for the prevention and control of marine pollution from vessels and relevant operating activities; (3) vessel discharges and reception facilities; (4) prevention and control of marine pollution from relevant operating activities; (5) emergency response to vessel-source pollution incidents; (6) investigation of vessel-source pollution incidents; (7) compensation for damages caused by vessel-source pollution incidents; (8) legal liability; and (10) miscellaneous provisions.

Compared to Regulation 83, Regulation 09 regulates 'prevention' and 'control', and not only 'prevention'. This not only follows the LOSC and MEPL99, but also reflects

the guiding ideology of China's marine environment protection: 'prevention, control and compensation'.<sup>3</sup>

The first chapter of Regulation 09 sets out principles and the scope of application. While Regulation 83 is applied to all ships, ship owners and other people within China's jurisdiction or any Chinese port (article 2), Regulation 09 aims to prevent and control marine pollution from vessels and relevant operating activities within China's jurisdiction (article 2). Regulation 09 declares that 'stressing prevention while combining prevention with abatement' is the guiding principle for the prevention and control of marine pollution from vessels and relevant operating activities (article 3). The Maritime Safety Agency (MSA) is authorized as the competent authority, which replaces the Harbor Superintendency Administration established under Regulation 83.<sup>4</sup> The MSA should also cooperate with State Oceanic Administration for a better supervision of vessels and relevant operating activities (article 7). Moreover, Regulation 09 requires the MSA and local governments to develop contingency capacity-building planning, contingency response systems, contingency plans as well as professional teams and equipment (article 5 and article 8). It is the first time that emergency response to vessel-source pollution clearly becomes a legal responsibility of the Government, which is in accordance with the 2007 Emergency Response Law of P. R. China. In addition, article 9 stipulates that any entity and individual should report to the nearest competent authority.

Chapter 2 is titled 'General Provisions'. In order to implement MARPOL,<sup>5</sup> it provides that construction, equipment and apparatus of vessels should fit the requirements to prevent and control vessel-source pollution in national legislation and international conventions that China has ratified. Vessels (not limited to oil tankers of 150 tons and above and other ships of more than 400 tons as in Regulation 83) should carry anti-pollution certificates in accordance with domestic legislation as well as international

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<sup>3</sup> H. Wang, 'Legal Cornerstone for the Prevention of Marine Pollution From Vessels, an Interview to the Deputy Director of the Department of Industry, Information, Transport and Commerce, Legislative Affairs Office of the State Council, P. R. China' (2009) 10 *China Maritime Safety*.

<sup>4</sup> Former Harbor Superintendency Administration and Ship Superintendency Administration of Ministry of Transport were merged into the Maritime Safety Agency, which is also affiliated with the Ministry of Transport.

<sup>5</sup> China ratified MARPOL73/78 Annex I, II in 1983, Annex III in 1994, Annex IV in 2006, Annex V in 1988 and Annex VI in 2006.

conventions which China has ratified (article 10). Regulation 09 uses a reference article instead of detailed requirements as was the case in chapter 3 (anti-pollution certificate) of Regulation 83, which can be helpful for Regulation 09 to 'catch up' with the fast development of international marine conventions. Moreover, as a contracting party to the LOSC, China also needs to enforce flag state control for preventing vessel-source pollution. This resulted in the inclusion of a new article 11, which requires all ship owners, operators and managers of Chinese vessels to establish a safe operation system for preventing vessel-source pollution. Furthermore, articles 12, 13 and 14 provide details to implement article 69 of MEPL99 (all ports, harbors, loading stations and shipyards are required to be equipped with anti-pollution facilities).

Chapter 3 deals with vessel discharges and reception. Once again, a reference article is used: vessels should obey domestic legislations, international conventions as well as relevant standards to prevent atmospheric pollution and to prevent and control discharges of garbage, sewage, oil-containing waste water, hazardous and noxious waste and ballast water into sea areas within China's jurisdiction. Otherwise, pollutants that are not allowed to be discharged should be delivered to reception facilities (article 15). However, the 1983 National Vessel Pollutant Discharge Standard also needs to be updated to enable the enforcement of the Regulation 09 in the near future. Another important provision is article 19, which compels qualified reception companies to report monthly to the MSA about the reception and disposal of vessel pollutants. Since 1986, the Chinese Government submits every year Mandatory Reports on Implementation MARPOL73/78. However, the third part of the report about reception facilities is always empty.<sup>6</sup> It is foreseeable that this problem may be solved if article 19 can be enforced properly in the future.

Chapter 4 focuses on marine pollution from relevant operating activities, which is supplemented by chapter 5 (hazardous cargo carried by ships), chapter 8 (use of vessels for dumping) and chapter 9 (Vessels Building, Repair, Salvage and Dismantling on and under Water) of Regulation 83. However, chapter 4 substantially revised and expanded Regulation 83. Articles 21-25 deal with hazardous cargo carried by ships. Ship owners, cargo owners or their brokers (the list of hazardous

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<sup>6</sup> H. Lao, 'Good Work Requires Good Tools: How are We Going to Deal with the Entry into Force of MARPOL73/78 and its Annexes' (2008) 8 *China Maritime Safety* 4.

cargo will be announced by the MSA) should submit applications to the MSA. Vessels can only enter into port after the approval of the MSA. In the event that it is not clear whether the cargo is hazardous or not, an authorized institution must first carry out an assessment. Moreover, the MSA has the power to check the cargo for shipment whenever it believes it is necessary. Article 26 makes it clear how to apply for the approval from the MSA (regulated in terms of article 70 of MEPL99) for vessels undertaking ship-to-ship transfer of noxious liquid substances. Bunkering (article 27 and article 28), ship building and dismantling (article 29 and article 30) and dumping (article 32) are also regulated. In accordance with article 39 of MEPL99, vessels are prohibited to carry hazardous waste within internal waters and territorial sea. In other sea areas under China's jurisdiction, vessels should sail with paper approval from the Ministry of Environmental Protection, in the sea lane designated by the MSA and regularly report its position to the MSA (article 31). The operators of vessels carrying noxious liquid substances and other vessels above 10,000 gross tonnages, must sign a cleanup agreement with a qualified company before operation or entry into port.

Chapters 5 and 6 are two new chapters focusing on vessel-source pollution accidents. Article 36 of chapter 5 clearly sets out four different levels of vessel-source pollution accidents. It is divided into four levels based on the amount of oil spilled or direct economic losses, namely: most serious accidents (above 1000 tons or 200 million RMB loss); very serious accidents (500-1000 tons or 100 – 200 million RMB); serious accidents (100- 500 tons or 50-100 million RMB); and accidents (less than 100 tons or 50 million RMB). This is important since it clarifies which department in the Government is responsible to deal with an accident (article 39) and which one is responsible to carry out the investigation after an accident (article 44). The responsible department also needs to follow a series of rules in order to do the investigation (articles 45-48), prepare an accident report and subsequently send it to relevant parties within 20 days (article 49).

Chapter 7 deals with compensation for pollution damage caused by vessels. It makes Regulation 09 a mixed regulation, including both preventive measures and civil liability articles. Moreover, liability can definitely become an important incentive for parties to be more careful with their responsibility concerning preventing vessel-

source pollution.<sup>7</sup> Mandatory insurance for oil pollution is established (article 53). All vessels that navigate in the sea areas under China's jurisdiction should have appropriate insurance policies or financial guarantee, except vessels below 1,000 gross tonnage that don't carry oil. The national oil pollution compensation fund is finally established by Regulation 09 (article 56), which is remarked as the most important and impressive article in the Regulation 09.<sup>8</sup> Article 56 clarifies who is liable to pay for the compensation fund (oil receivers or their brokers), how to collect, use and manage the fund (rules on the collection and use of oil pollution compensation fund has already been drafted and is now waiting for being issued) and who will deal with compensation claims (the National Fund Management Committee which consists of relevant government departments and cargo owners who pay the money). Since China is of the opinion that if it accepts the 1992 Fund Convention nationally, it would be too heavy a burden for domestic oil receivers,<sup>9</sup> China decided to establish its own national compensation fund. According to the draft rules, oil receivers will pay 0.3 RMB/ton for the oil import. Otherwise, its oil import will be prohibited to enter into the port or loading and unloading station.<sup>10</sup> The financial cap for each claim may be 50 million RMB. What is unclear is how parties suffering from oil pollution claim compensation from the fund.

Chapter 8 concentrates on administrative measures on vessel-source pollution. The Regulation 09 not only imposes administrative measures to ship owners and operators, but also to companies of relevant operating activities such as reception facilities, bunker providers and cargo owners. Unlike regulation 83 which only sets out warning and fixed fines, it sets different kinds of fines as well as other measures (stop working, mandatory unloading, prohibited of entering into the port, etc).

The last chapter follows Art. 97 of MEPL99, which governs relations between domestic law and international law. Accordingly, except clauses that are reserved by the Chinese Government when it ratified the Convention, international conventions

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<sup>7</sup> G. Gauci, 'Protection of the Marine Environment through the International Ship-Source Oil Pollution Compensation Regimes' (1999) 8 *RECIEL* 30.

<sup>8</sup> J. Geng, 'Draft Regulations on Administration of Prevention and Control of Pollution of Marine Environment from Vessels, a Legal Framework of Prevention, Control and Compensation for Vessel-Source Pollution is Emerging' (2008) 5 *Maritime Review* 11.

<sup>9</sup> H. Wang, 'Oil Pollution Compensation Fund is Coming: China will Establish Oil Pollution Compensation Fund which is suitable with its Realities' (2005) 1 *China Maritime Safety* 11.

<sup>10</sup> See <http://finance.ifeng.com/huanbao/fgbz/20090916/1243830.shtml>.

on prevention of vessel-source pollution prevail over domestic legislations and will be directly applied (article 75). Article 76 authorizes fishing agencies to be in charge of preventing vessel-source pollution from fishing vessels outside fishing ports and non-military vessels in fishing ports. The environment protection agency of the military is the competent authority to supervise, manage and investigate vessel-source pollution from military vessels.

## **Conclusion**

Compared to Regulation 83, great improvements can be found in Regulation 09 to implement the MEPL99 as well as international conventions that China has ratified (LOSC, MARPOL, SOLAS, OPRC and etc). It is far more detailed and clearer than its predecessor. However, a set of complementary rules such as oil discharge standards and guidance for claiming compensation from the national oil pollution compensation fund are still required to ensure the adequate prevention of vessel-source pollution in China.